CalPERS

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AGENDA ITEM 4c

TO: MEMBERS OF THE INVESTMENT COMMITTEE

I. SUBJECT: Implementation of Sudan and Iran Divestment Legislation

II. PROGRAM: Total Fund

III. RECOMMENDATION: Information

IV. ANALYSIS:

Background

In 2006, the Sudan Divestment Act ("Sudan Act") was enacted and signed into law by Governor Schwarzenegger. The law went into effect on January 1, 2007. The law prohibits CalPERS from investing in companies that have active business operations, as defined in the statute, in Sudan or are engaged in business operations that provide revenue to the government of Sudan.

In 2007, the California Public Divest from Iran Act ("Iran Act") was introduced by Assemblyman Joel Anderson and signed into law by the Governor in October. The law went into effect on January 1, 2008. The law prohibits CalPERS from investing in companies with certain business operations in Iran. Although not identical, the Iran Act is roughly parallel to the Sudan Act.

The purpose of this agenda item is to inform the Investment Committee of the implementation and status of both Acts as they relate to the holdings of CalPERS.

SUDAN

Update

To date, staff has been in the process of engaging the companies that have been identified by RiskMetrics, a third party research firm, as meeting the criteria for business operations in Sudan. Staff also continues to monitor other sources, including the Sudan Divestment Task Force list, and engages companies where appropriate.

Engagement letters have been sent to over 30 companies and as is required by the Sudan Act, the companies were given specific time requirements to respond with evidence of substantial action. As defined in statute, “Substantial Action” means a boycott of the government of Sudan, curtailing business in Sudan until the bill is no longer in effect, selling company assets, equipment, or real and personal property located in Sudan, or undertaking significant humanitarian efforts in the eastern, southern, or western regions of Sudan. The majority of the companies who were contacted have taken substantial action and continue to make sufficient progress towards meeting the criteria of the law.

Out of the 30+ companies, staff is currently reviewing six companies to determine whether they are candidates for divestment under the law. If they are determined to be candidates for divestment, staff will present this information to the Committee, along with a comprehensive analysis of whether divestment would be consistent with CalPERS’ fiduciary duty.

Next Steps

Staff continues to receive regular reports from RiskMetrics that provide current names of companies who potentially meet the statutory crieria. Once staff has determined that CalPERS has holdings in the newly identified companies, they are sent letters of engagement and the timeline for response goes into effect. Attachment 1 provides the names of companies identified since the last list was provided in June 2007.

The Sudan Act states that if divestment is required (pursuant to 7513.6(h)) the deadline for liquidation is 18 months from the date CalPERS decides that the companies have failed to take substantial action. However, the bill expressly states that CalPERS is not required to divest unless it determines that doing so is consistent with its fiduciary responsibilities under California Constitution Article XVI, Section 17. This analysis will be conducted in conjunction with the Legal Office.

Also, as required by law, staff will prepare a report that will be presented to the Legislature in January 2009. This report will be presented to the Committee for approval in December 2008.

IRAN

Update

As with Sudan, staff has retained RiskMetrics to provide a list of companies that meet the criteria of the Iran Act. Staff has reviewed the list and as required by the Iran Act, determined by June 30, 2008 which companies are "subject to divestment" under the Iran Act's criteria. CalPERS has found that there are 47 companies who meet the criteria (Attachment 2).

Staff is now in the process of generating the letters of engagement that will be sent to the companies notifying them that they are subject to the Iran Act and providing them the opportunities to respond. This notification will request that the company take "substantial action" within ninety days. "Substantial action" is defined in the Iran Act as "a boycott of the government of Iran, curtailing business in Iran until [certain criteria are met]…, or selling company assets, equipment, or real and personal property located in Iran." (Sec. 7513.7 (a)(9)).

Next Steps

Staff will monitor the responses from the companies who have been contacted and continue to review the list provided by RiskMetrics for new companies that may be subject to the statute. Staff will provide an update to the Board at the December Investment Committee meeting on the status of the companies who have been engaged under the Iran Act. Staff will also prepare the Legislative report due January 2009.

CalPERS has also been in contact with Assemblymember Anderson (Attachments 3 and 4) and will continue to update him on our progress.

V. STRATEGIC PLAN:

This item is not a product of the CalPERS Strategic Plan.

VI. RESULTS/COSTS:

Costs for implementation of these two Acts include fees paid to RiskMetrics and staff time to review, notify and monitor companies. Potential costs associated with possible divestment would include transaction costs and loss of capital as well as opportunity loss. There is also the cost for retaining fiduciary counsel to advise CalPERS on its fiduciary obligations relative to the implementation of the Acts.

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